

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER LICENSE NO. 63-32966)
IN THE NAME OF BARBER VALLEY)
IRRIGATION COMPANY, INC.)
_____)

**PRELIMINARY ORDER
CORRECTING LICENSE**

This matter having come before the Idaho Department of Water Resources (Department) as a petition to correct a water right license, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On June 9, 2009, the Department issued Permit 63-32966 ("Permit") to the Harris Family Ltd. Partnership ("Harris Family") authorizing the development of a right to store ground water in three ponds for aesthetic purposes.
2. At the time it was issued, the approval conditions on the Permit required Harris to mitigate for the evaporation and seepage from the three permitted ponds by ceasing to divert and use portions of two water rights, 63-365 and 63-2973. The mitigation requirement totaled 0.11 cfs, 25.2 af, and 5.6 acres of irrigation. The Department used the Permit approval, issued as a preliminary order pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730), to update the record for rights 63-365 and 63-2973 to show the amounts committed to non-use to satisfy the Permit's mitigation requirement.
3. On December 15, 2015, Harris assigned the permit to Barber Valley Irrigation Company, Inc. "Right Holder").
4. On February 12, 2016, the Department approved the Right Holder's application to amend the Permit ("Amendment") and issued Water Right License 63-32966 ("License") to the Right Holder. Because the Right Holder developed smaller ponds than originally anticipated, approval condition no. 2 on the License reduced the total mitigation requirement from rights 63-365 and 63-2973 to a total of 0.10 cfs, 22.1 af, and 4.9 acres. The Department used the License approval, issued as preliminary order pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730), to update the record for rights 63-365 and 63-2973 to show their mitigation portions now total 0.10 cfs, 22.1 af, and 4.9 acres. In the record for rights 63-365 and 63-2973, the Department converted the difference between the mitigation required for the Permit and the mitigation required for the License back to irrigation use.
5. Despite the reduced mitigation requirement, License approval condition no. 5 states:

Transfer 74506 authorizes the diversion and delivery of 0.11 cfs and 25.2 af of water to storage for replacement of evaporation and seepage losses from three ponds (3) authorized by Right 63-32966.

6. On January 30, 2017, the Right Holder submitted a letter requesting that approval condition no. 5 be removed from the license because it does not accurately state the mitigation requirement for right 63-32966 and it is not necessary to define the right.

CONCLUSIONS OF LAW

1. Idaho Code § 42-219 describes the Department's role in licensing a water right after proof of beneficial use has been submitted:

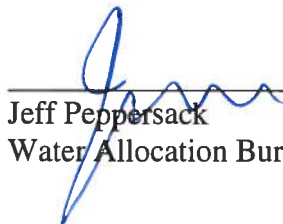
Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use.

2. Under Idaho Code § 42-219, the Department has an obligation to issue a water right license that accurately portrays the beneficial use of water developed in accordance with the permit.
3. The full mitigation requirement is stated in approval condition no. 2 on the License. Approval condition no. 5 on the License states an inaccurate mitigation requirement and contradicts approval condition no. 2 of the License.
4. The Department placed approval condition no. 5 on the License in error. The Department should correct right 63-32966 by removing condition 5 from the License.

ORDER

IT IS HEREBY ORDERED that Water Right License 63-32966 is **CORRECTED** by removing approval condition no. 5.

Dated this 6th day of February, 2017.



Jeff Peppersack
Water Allocation Bureau Chief